

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 J&J SPORTS PRODUCTIONS, INC.,

Case No.: 2:17-cv-00682-APG-VCF

4 Plaintiff

**Order (1) Granting Plaintiff's Motion for
Summary Judgment and (2) Granting in
Part Plaintiff's Motion for Reconsideration**

5 v.

[ECF Nos. 22, 28]

6 LISA MATA, individually and d/b/a/ Juarez
7 El Paso Border Food a/k/a Juarez Border
8 Food; and LVP INTERNATIONAL, LLC, an
unknown entity d/b/a/ Juarez El Paso Border
Food a/k/a Juarez Border Food,

9 Defendants

10 Plaintiff J&J Sports Productions, Inc. was granted the exclusive distribution rights to the
11 "Toe to Toe" Saul Alvarez v. Alfredo Angulo Light Middleweight Championship Fight Program.
12 J&J alleges defendant Lisa Mata illegally broadcast this fight at her restaurant, Juarez El Paso
13 Border Food, in violation of 47 U.S.C. § 605 and 47 U.S.C. § 553. J&J now moves for summary
14 judgment. J&J has shown there are no issues of material fact as to Mata's liability under § 605
15 and it is entitled to judgment as a matter of law. I therefore grant its motion for summary
16 judgment. I deny J&J's motion to amend my grant of default judgment as to defendant LVP
17 International, LLC except as to attorneys' fees.

18 J&J, a closed-circuit distributor of sports programming, purchased the exclusive licensing
19 rights to the Alvarez-Angulo fight program, which included both the main event and the
20 undercard bouts. ECF No. 22-3 at 2, 7–12. Commercial establishments wishing to broadcast the
21 program were required to pay J&J a sublicense fee based on the establishment's capacity. *Id.* at
22 3, 14. Mata did not pay the fee to J&J. *Id.* at 2. Two investigators went to Juarez El Paso Border
23 Food on the night of the fight and observed three televisions showing the program and

1 approximately 12 to 30 patrons. ECF No. 22-2 at 1, 3. The restaurant had posted on its Facebook
2 page that it would be showing the fight. ECF No. 22-1 at 30.

3 Because Mata did not respond to J&J's requests for admission, the following facts are
4 deemed admitted under Federal Rule of Civil Procedure 36¹: (1) Mata was the owner, manager,
5 and officer of Juarez El Paso Border Food when the program was broadcast, and any employees
6 of the restaurant were working on her behalf; (2) Mata was present at the restaurant when the
7 program was broadcast; (3) Mata did not pay a licensing fee to J&J for the program but was
8 aware this was required; (4) Mata or her employees advertised the program; and (5) the program
9 was received by diverting a residential satellite service into the restaurant, an illegal decoder was
10 used in the restaurant, and/or Mata ordered the program from a programming provider (i.e.,
11 website, cable company, Dish Network, DirecTV) and paid the provider the residential license
12 fee for the program. *See* ECF No. 22-1 at 18–25.

13 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits
14 demonstrate “there is no genuine dispute as to any material fact and the movant is entitled to
15 judgment as a matter of law.” Fed. R. Civ. P. 56(a), (c). A fact is material if it “might affect the
16 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
17 248 (1986). An issue is genuine if “the evidence is such that a reasonable jury could return a
18 verdict for the nonmoving party.” *Id.*

19 The party seeking summary judgment bears the initial burden of informing the court of
20 the basis for its motion and identifying those portions of the record that demonstrate the absence

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22 ¹ Under Rule 36(a), a matter is deemed admitted “unless, within 30 days after service of
23 the request . . . the party to whom the request is directed serves upon the party requesting the
admission a written answer or objection.” Once admitted, a matter “is conclusively established
unless the court on motion permits withdrawal or amendment of the admission.” Fed. R. Civ. P.
36(b). No such motion has been filed.

1 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
2 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
3 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531
4 (9th Cir. 2000). I view the evidence and draw reasonable inferences in the light most favorable
5 to the non-moving party. *James River Ins. Co. v. Hebert Schenck, P.C.*, 523 F.3d 915, 920 (9th
6 Cir. 2008). “Unanswered requests for admissions may be relied on as the basis for granting
7 summary judgment.” *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007).

8 **A. Liability**

9 Although J&J alleged violations of both 47 U.S.C. § 605 and § 553, it appears to move
10 for judgment under only § 605. “Section 605(a) of the Communications Act prohibits the
11 unauthorized receipt and use of radio communications for one’s ‘own benefit or for the benefit of
12 another not entitled thereto.’” *DirecTV, Inc. v. Webb*, 545 F.3d 837, 844 (9th Cir. 2008) (quoting
13 47 U.S.C. § 605(a)). This section applies to satellite television signals. *Id.* Furthermore, § 605 is
14 a strict liability statute. *See* 47 U.S.C. § 605(e)(3)(C)(iii) (allowing for a reduction in damages
15 upon a finding “the violator was not aware and had no reason to believe his acts constituted a
16 violation”); *J&J Sports Prods., Inc. v. Aguilar*, No. CV 14-03268 WDK-PLA, 2016 WL 232292,
17 at *2–3 (C.D. Cal. Jan. 19, 2016) (discussing past courts’ interpretation of § 605 as a strict
18 liability statute). “[L]iability under section 605 requires proof that a defendant has (1)
19 intercepted or aided the interception of, and (2) divulged or published, or aided the divulging or
20 publishing of, a communication transmitted by the plaintiff.” *Cal. Satellite Sys. v. Seimon*, 767
21 F.2d 1364, 1366 (9th Cir. 1985).

22 J&J contends that, based on Mata’s admissions and its president’s and investigators’
23 affidavits, it has shown that Mata intercepted and published the program to which J&J had

1 exclusive licensing rights. Mata, appearing pro se, does not respond to this argument. Instead,
2 she argues only that the fight was shown to family and neighbors for their own entertainment.
3 Thus, she does not raise a genuine issue of fact as to whether she violated § 605.²

4 **B. Damages**

5 J&J requests statutory damages in lieu of actual damages. Under § 605, “the party
6 aggrieved may recover an award of statutory damages for each violation . . . in a sum of not less
7 than \$1,000 or more than \$10,000, as the court considers just . . .” 47 U.S.C.
8 § 605(e)(3)(C)(i)(II). J&J also requests enhanced damages for the willful violation of the statute.
9 *See* 47 U.S.C. § 605(e)(3)(C)(ii) (“In any case in which the court finds that the violation was
10 committed willfully and for purposes of direct or indirect commercial advantage or private
11 financial gain, the court in its discretion may increase the award of damages, whether actual or
12 statutory, by an amount of not more than \$100,000 for each violation of subsection (a) of this
13 section.”). J&J argues it should receive the maximum statutory and enhanced damages to
14 properly deter both Mata and other possible pirates from similar future willful violations of the
15 statute. In response, Mata contends that the program was not shown for financial gain, but only
16 to family and neighbors.

17 First, Mata offers no admissible evidence to support her claims, such as a sworn affidavit.
18 Because Mata is pro se, I “consider as evidence in [her] opposition to summary judgment all of
19 [her] contentions offered in motions and pleadings, where such contentions are based on personal

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21 ² Because Mata admitted to being the manager of the restaurant, to the employees acting on her
22 behalf, and to being inside the establishment when the program was shown, J&J has shown that
23 she can be held liable in her individual capacity. Mata had the right and ability to supervise the
violations and a financial interest in showing the program without authorization. *See J&J Sports
Prods., Inc. v. Mikhael*, No. SA CV 14-01463 WDK-PLA, 2016 WL 2984191, at *2 (C.D. Cal.
May 19, 2016); *J&J Sports Prods., Inc. v. J.R. ‘Z Neighborhood Sports Grille, Inc.*, No. 2:09-
03141-DCN-RSC, 2010 WL 1838432, at *2 (D. S.C. Apr. 5, 2010).

1 knowledge and set forth facts that would be admissible in evidence, and where [she] has attested
2 under penalty of perjury that the contents of the motions or pleadings are true and correct.”
3 *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004). Unsworn assertions do not constitute
4 evidence. *Id.*; *Coverdell v. Dep’t of Social & Health Servs., State of Wash.*, 834 F.2d 758, 762
5 (9th Cir. 1987). Mata offers only unsworn assertions that her conduct was not for financial gain.
6 Notably, this is contradicted by the fact that the restaurant had posted on its Facebook page that it
7 would be showing the fight. ECF No. 22-1 at 30. Mata has not raised a genuine issue of fact as
8 to the willfulness of her violation or its purpose for commercial advantage or private financial
9 gain.

10 J&J has provided no evidence of Mata’s profit from the wrongful broadcast of the fight
11 program. The cost of the licensing fee would have been \$1,200. ECF No. 22-3 at 14. J&J’s
12 investigators observed between 12 and 30 patrons, purchased food and drink, but were not
13 required to pay a cover charge. ECF No. 22-2 at 1, 3. While deterrence is a goal of statutory
14 damages, I do not find the maximum award is warranted. Therefore, I grant statutory damages in
15 the amount of \$5,000.

16 With respect to J&J’s request for the full \$100,000 in enhanced damages, I find this is
17 similarly unwarranted. While Mata has admitted she willfully pirated the program and the
18 restaurant did advertise on Facebook, “[t]here is no evidence that [Mata] is a repeat illegal
19 interceptor of programming, and there is no evidence that [J&J] incurred significant damages.”
20 *Joe Hand Promotions, Inc. v. Pinkhasov*, No. CV 11-02437-PHX-FJM, 2012 WL 2641451, at *1
21 (D. Ariz. Aug. 24, 2012). There is “also no evidence that [Mata] charged a premium for drinks
22 or food” or a cover charge. *Id.* While the program was displayed on three televisions, there were
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1 at most 30 people present. Given these considerations, I grant an enhanced damages award in
2 the amount of \$5,000.

3 **C. Motion for Reconsideration**

4 J&J also moves for a reconsideration of the damages awarded for its default judgment
5 against LVP. “Reconsideration is appropriate if the district court (1) is presented with newly
6 discovered evidence, (2) committed clear error or the initial decision is manifestly unjust, or (3)
7 if there is an intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cty., Or. v.*
8 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

9 J&J has not shown that any of these three conditions exists with respect to the damages
10 amount awarded. Therefore, the motion is denied as to damages. With respect to attorneys’
11 fees, § 605 states the court “shall direct the recovery of full costs, including awarding reasonable
12 attorneys’ fees to an aggrieved party who prevails.” 47 U.S.C. § 605(e)(3)(B)(iii). J&J did not
13 support its motion for default judgment with any documentation regarding attorneys’ fees and
14 therefore none were awarded. Given the statutory language, J&J should file a supplemental brief
15 with its request for attorneys’ fees and costs along with supporting documentation.

16 **D. Conclusion**

17 IT IS THEREFORE ORDERED that plaintiff J&J Sports Productions, Inc.’s motion for
18 summary judgment (**ECF No. 22**) is **GRANTED**.

19 IT IS FURTHER ORDERED that J&J’s motion for reconsideration (**ECF No. 28**) is
20 **GRANTED in part**.

21 IT IS FURTHER ORDERED that J&J shall submit a supplemental brief and supporting
22 documentation regarding attorneys’ fees and costs within 14 days of this order.

1 IT IS FURTHER ORDERED that the clerk of court is directed to enter judgment in favor
2 of J&J and against defendant Lisa Mata in the amount of \$10,000.

3 DATED this 20th day of July, 2018.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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